REMARKS

Pending claims 1-12 and 24-35 stand rejected in the July 24, 2008 Final Office Action. The central issue in the pending application is the meaning of the term "ongoing reverse link throughput." Applicant previously construed this term to mean "the amount of data transferred from a mobile user to a base station divided by the time taken to transfer it." See the Office Action response previously filed on November 6, 2007. This term has not been explicitly construed on the record by the Patent Office.

Applicant's attorney contacted Examiner Loo on September 19, 2008 requesting the Patent Office to explain how the Office construes the term. Examiner Loo indicated that the Patent Office broadly construes the term "ongoing reverse link throughput" to mean the current reverse link data rate of the mobile station. Examiner Loo indicated that this definition was obtained from Newton's telecom dictionary.

In response, independent claims 1 and 24 are amended herein to explicitly define the claim term "ongoing reverse link throughput" to mean "a rate at which data is successfully transferred from the mobile station to a base station." No new matter is added by way of this claim amendment. For example, see paragraphs [0016], [0019], [0022] an [0026] of the original specification.

U.S. Patent Publication No. 2004/0160922 (Nanda) does not teach or suggest generating reverse link rate requests in part based on the rate at which data is successfully transferred from the mobile station to a base station. To the contrary, Nanda generates reverse link rate requests based on probabilistic QoS parameters. See the prior Office Action responses mailed on November 6, 2007 and January 30, 2008 for a more detailed explanation as to how Nanda generates reverse link rate requests.

Moreover, the rate at which data is successfully transferred from a mobile station to a base station is not always equal to the current reverse link data rate of the mobile station. For

example, data packets are often lost or otherwise corrupted during transmission. Under these conditions, more packets are transmitted than are successfully received. The current reverse link data rate of the mobile station does not account for corrupted and/or lost packets. Instead, it is a measure of the rate at which all packets are transmitted. However, the ongoing reverse link throughput as defined in claims 1 and 24 is a measure of successfully transferred data. This rate will be less than the current reverse link data rate when one or more packets are dropped and/or corrupted during transmission. For this reason alone, independent claims 1 and 24 are not anticipated because Nanda fails to describe all of the claim elements. *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340 (Fed. Cir. 1998).

Applicant has made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicant respectfully requests reconsideration of the pending claims. If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 919.854.1844.

Respectfully submitted,

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